Court No.2

In the High Court of Uttaranchal at Nainital.

Appeal Against Order No. 1492 of 2001.

(1) Smt. Maya Devi Sharda
W/o late Rajeshwar Saran Sharda,
(2) Sri Neeraj Sharda S/o late Rajeshwar Saran Sharda,
Both residents of Hydle Gate,
Post Office Kathgodam, Haldwani,
District-Nainital. ..... Appellant/Claimants.

Versus

(1) State of U.P. through Collector, Nainital,
(2) State of U.P. through Executive Engineer,
Construction Division, Nalkoop Vibhag,
Teen Pani, Haldwani, District-Nainital.
.....Respondent/Opp.parties.

Sri Bhupendra Singh & Sri R.K.Raizada, learned counsel for the Claimants. Learned Standing counsel for the respondents/State.

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Dated: 21st Aug., 2004.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This is an appeal filed by the claimants under Sec. 173 of the Motor Vehicles Act, 1988 against the award dated 28.06.2001 passed by the Motor Accident Claims Tribunal/District Judge, Nainital *(hereinafter referred to as the Act)* in Motor Accident Claim Case No. 150 of 2000.

Brief facts giving rise to this appeal are that on 25.3.2000 deceased Rajeshwar Saran Sharda was going to his Factory at Kamaluwaganja in his Maruti Van No. UP 02D/3801 and when he reached near Nimmatpur Laxmi Chauraha, a Govt.Jeep bearing registration NO. UGI 7897 came from the opposite direction driven by its driver in a very rash and negligent manner and dashed Maruti Van of deceased due to which Rajeshwar Saran Sharda sustained grievous injuries and died on the spot. The deceased was aged 62 years at the time of accident and was running his own factory in the name and style of Minerals Corporation

manufacturing soap stone powder and he was income tax payee. The claimants, who are the dependents of deceased, filed the claim petition for compensation amounting to Rs. 6,76,167.00 due to death of Rajeshwar Saran Sharda.

The opposite party-State contested the claim petition. The learned Tribunal on the pleadings of the parties framed issues. After recording the oral and documentary evidence, the learned Tribunal came to conclusion that the deceased was equally negligent in accident and calculated the dependency worth Rs, 5,01,600.00, out of which applying the contributory negligence theory at the rate of 50% of the compensation, decreed the claim petition for compensation amounting to Rs.2,50,800.00 against the opposite parties alongwith interest at the rate of 9% per annum from the date of petition till the date of payment. Feeling aggrieved, the claimants filed this appeal.

Learned counsel for the appellants pressed the appeal only on the ground that the finding of the learned Tribunal is erroneous holding that there was contributory negligence on the part of the deceased to the extent of 50% and deducted the amount of compensation accordingly.

The Tribunal has recorded a finding that the accident took place as the aforesaid Jeep of the respondents hit the Maruti Van on which the deceased was travelling. The Tribunal has further recorded a finding that in accident there was negligence of both the parties as it was a head on collision. Therefore, it was a case of contributory negligence and, accordingly, deducted 50% from the amount calculated towards the compensation.

The learned counsel for the appellant submitted that though it was a head on collision but it was total

negligence of the driver of the Jeep owned by the State Government as the Jeep hit the Maruti Van which was on its side and, therefore, it cannot be said to be a case of contributory negligence. It was total negligence of the driver of said Jeep who hit the Van leaving his side. The learned counsel for the appellants relied on a judgment of Hon'ble the Supreme Court in case of ***Pramodkumar Rasikbhai Jhaveri versus Karmasey Kunvargi Tak and others*** reported in ***(2002) 6 Supreme Court Cases 455*** and submitted that even if negligence was proved then 50% deduction is made in extreme case. Here in the present case, since the Tribunal has itself recorded a finding that right side of the Maruti Van was hit by the Jeep of the respondents, therefore it was not a case of total negligence in which 50% could be deducted. Admittedly, the Tribunal has recorded a finding that the offending Jeep hit the right side of the Van. This shows that the Van was on its side and it was the negligence of the driver of the Jeep who, on going right side, hit the Van. Therefore, deduction of 50% of the amount from the compensation is not justified. In our opinion, in such a case only 20% deduction would be justified.

Therefore, the appeal is allowed. The impugned award dated 28.6.2001 is enhanced and modified accordingly. The claimants shall be entitled for payment of amount of compensation worth Rs.4,01,280.00 (Rupees four lacs one thousand two hundred eighty) alongwith interest at the rate fixed by the learned Tribunal. No order as to costs.

(B.S.Verma,J.) **(P.C.Verma,J.)**

P.Singh